

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BLYTHE TAPLIN,
On behalf of Rogers Lacaze ,
The Capital Appeals Project
636 Baronne Street
New Orleans, LA 70113-1004

Plaintiff,

v.

CIVIL ACTION

UNITED STATES DEPARTMENT
OF JUSTICE
950 Pennsylvania Avenue, NW
Washington, DC 20530

and

FEDERAL BUREAU OF INVESTIGATION
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF

This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief, and seeking the expedited processing and release of agency records requested by Plaintiff from Defendants.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter, pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(E).

2. Venue is proper in this judicial district under 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Plaintiff Blythe Taplin is an attorney at the Capital Appeals Project in New Orleans, Louisiana, who, on behalf of her client, Rogers Lacaze, has requested and has been refused access to records of the United States Department of Justice (“Department of Justice” or “DOJ”) and the Federal Bureau of Investigation (“FBI”), one of its components. She has represented Mr. Lacaze in state post-conviction proceedings since 2009.

4. Mr. Lacaze is an adult resident of the Eastern District of Louisiana. He has been incarcerated on Death Row at the Louisiana State Penitentiary in Angola, Louisiana, since 1995. Rogers Lacaze was 18 years old with a 71 IQ and no prior criminal convictions when he was convicted and sentenced to death for this offense.

5. Defendant United States Department of Justice (“Department of Justice” or “DOJ”) is a Department of the Executive Branch of the United States government. DOJ operates throughout the United States, including within the State of Louisiana. DOJ is an agency within the meaning of 5 U.S.C. § 552(f), is subject to the requirements of the FOIA, and controls the FBI. Plaintiff sent her FOIA request to the DOJ and it has improperly withheld the records at issue here.

6. Defendant Federal Bureau of Investigation (“FBI”) is an agency of the United States government and a division of the Department of Justice, operating throughout the United States, including within the State of Louisiana. FBI is an agency within the meaning of 5 U.S.C.

§552(f) and is subject to the requirements of the FOIA. Plaintiff sent her FOIA request to the FBI and it has improperly withheld the records at issue here.

FACTUAL ALLEGATIONS

Background

7. Mr. Lacaze was convicted of three counts of first degree murder and sentenced to death in July 1995 in state court in New Orleans, Louisiana. *State v. Rogers Lacaze*, No. 375-992.

8. Mr. Lacaze's codefendant, Antoinette Frank, was a New Orleans police officer at the time of the offense. Officer Frank was also convicted of first degree murder and sentenced to death. *State v. Antoinette Frank*, No. 375-992.

9. On March 4, 1995, two civilians, Cuong Vu and Ha Vu, and New Orleans Police Officer Ronald Williams were shot and killed at the Kim Anh restaurant in New Orleans, Louisiana. Cuong Vu and Ha Vu were restaurant employees and the children of the owners of the Kim Anh restaurant.

10. Officer Williams, Antoinette Frank, and multiple police witnesses at trial, worked on off duty "paid details" as security guards at the restaurant.

11. The management of "paid details" – i.e., unregulated off-duty law enforcement jobs – by New Orleans Police Officers has been the source of significant problems for decades. On March 16, 2011, DOJ's Civil Rights Division published a report entitled "Investigation of the New Orleans Police Department," detailing patterns of misconduct within NOPD, including the practice of "paid details." Calling paid details "the aorta of corruption," this report concluded that there were "few aspects of NOPD more broadly troubling than its Paid Detail system."

12. Upon information and belief, the Department of Justice has conducted additional inquiries into the conduct of the NOPD between the years 1994 and 1996, including investigations into allegations of corruption, brutality¹, and the mismanagement of evidence at the NOPD's Central Evidence and Property Division.

13. At Officer Antoinette Frank's trial, the State alleged that she had committed the murders with a nine millimeter Beretta she had acquired from the NOPD Central Evidence and Property Division. A New Orleans police officer gave statements to investigators, and testified in a closed hearing in chambers at Frank's trial that he had obtained the weapon for Officer Frank through a court order signed by Orleans Parish District Court Judge Frank Marullo.²

14. Documentation that firearms were being distributed to individual police officers from the NOPD Central Evidence and Property Division, including Antoinette Frank, was not disclosed to Mr. Lacaze or his counsel during his trial, and was never released to the public.

15. There is a strong public interest in disclosure of information about federal investigations into the practices of the NOPD, information gathered in these investigations, and the conclusions of the investigators and the federal agencies.

16. Evidence of corruption in the NOPD is also relevant to a broader understanding of the investigation and cover-up in the prosecution of Rogers Lacaze.

¹ Indeed, at the time of this offense, NOPD was embroiled in scandal following an FBI undercover investigation into the department's corruption ("Operation Shattered Shield"). As part of that investigation, the FBI conducted a sting operation in which it hired NOPD officers to work as off-duty security guards at a warehouse holding illegal drugs for shipment.

² Judge Frank Marullo presided over both Mr. Lacaze's and Ms. Frank's capital trials, but failed to disclose to Mr. Lacaze that Antoinette Frank had obtained the likely murder weapon through a court order bearing his signature.

17. Rogers Lacaze's capital post-conviction petition is currently pending in the Orleans Parish Criminal District Court. He asserts that he is actually innocent of this crime. His counsel argues that the government failed to disclose favorable evidence at trial in violation of its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), and that NOPD officers lied under oath at trial. His counsel also asserts that the State attempted to expedite the investigation of this homicide, as well as Mr. Lacaze's conviction and execution, in order to cover-up the pervasive misconduct within the New Orleans Police Department. Indeed, Rogers Lacaze was arrested, indicted, tried, convicted, and sentenced to death within a period of only four-and-one-half months.

The FOIA Request

18. On February 24, 2012, on behalf of her client Mr. Lacaze, Plaintiff filed a FOIA request seeking copies of all documents and tangible items from the DOJ and the FBI involving any investigation or background information regarding activities of the New Orleans Police Department, 7th District, between 1994 and 1996. Among other documents, this request specifically sought documents relating to the investigation into NOPD's use of "paid detail," distribution of firearms or receipt of firearms by individual police officers by or from The New Orleans Central Evidence and Property Division, suppression of evidence, extortion, and abuse of persons arrested or charged with crimes. This request also included any record of (or claim of statistical accomplishment concerning) communication between state or local officials and the FBI or DOJ regarding an investigation of NOPD and its practices.

19. The FOIA requests made clear that the information was being sought as part of Plaintiff's representation of Mr. Lacaze, a death row inmate, and that Plaintiff was seeking information that would corroborate Mr. Lacaze's claim of actual innocence.

20. On March 6, 2012, the FBI informed Plaintiff that FBI Headquarters had received her request and had assigned it FOIPA Request No. 1183705-000.

21. On March 12, 2012, the FBI informed Plaintiff that it was “unable to identify main file records responsive” to FOIA request 1183705-000.

22. On March 16, 2012, the DOJ notified Plaintiff that it had received her request and had referred it to the relevant “DOJ component(s).” DOJ sent another letter on May 17, 2012, indicating that it was still processing this request.

23. On March 19, 2012, the FBI notified Plaintiff that the New Orleans Field Office had received her request and had also assigned it FOIPA Request No. 1185388-000.

24. On March 20, 2012, the FBI informed Plaintiff that the New Orleans Field Office had conducted a search for documents requested in FOIPA Request No. 1183705-000, but could not identify any responsive main file records. It also informed Plaintiff that its records pertaining to NOPD, 7th District, were indexed under the names of the individual officers, and that such records would not be disclosed without these individuals’ authorization, proof that they were deceased, or Plaintiff made a “clear demonstration that the public interest in disclosure outweighs the personal privacy interest and that significant public benefit would result from the disclosure of the requested records.”

25. On March 21, 2012, Plaintiff wrote a letter to the FBI, requesting clarification of the search conducted and the documents found but not produced to her. The FBI acknowledged receipt of this letter on April 11, 2012, and assigned in FOIPA Request No. 1183705-001.

26. On April 9, 2002, DOJ sent a letter to Plaintiff, asking her to clarify which United States Attorney’s office she believed records could be located.

27. On April 16, 2012, the FBI informed Plaintiff that it had conducted an additional search, but was still “unable to identify main file records responsive” to FOIA request 1183705-000.

28. On May 7, 2012, Plaintiff filed an administrative appeal of the FBI’s decisions on FOIPA Request Numbers 1183705-000 and 1183705-001, with the DOJ Office of Information Policy (“DOJ OIP”). Because there were two FOIPA Request Numbers assigned, these were treated as two separate appeals, and assigned numbers AP-2012-02327 and AP-2012-0238.

29. On July 25, 2012, DOJ informed Plaintiff that it had determined that there were no responsive records at the United States Attorneys’ Office of the Eastern District of Louisiana.

30. On July 30, 2012, Plaintiff filed an administrative appeal of DOJ’s decision, with the DOJ OIP.

31. On August 24, 2012, Janice Galli McLeod of the DOJ OIP denied Plaintiff’s appeal of the FBI’s action on her FOIA request. DOJ OIP informed Plaintiff that it had determined that the FBI had “conducted an adequate, reasonable search for responsive records” and that it was “affirming the FBI’s action” that located “no records responsive” to Plaintiff’s request. No details of the FBI’s search were provided by the FBI or by DOJ OIP.

32. As part of this decision, DOJ OIP also informed Plaintiff that any records concerning NOPD, 7th District would “most likely be indexed under [individual officer’s names]” and that “to the extent any such records exist,” they would be exempt from disclosure under 5 U.S.C. § 552(b)(7)(C). This amounted to a *Glomar* response, neither confirming nor denying the existence of responsive records.

33. On October 17, 2012, Ms. McLeod denied Plaintiff’s appeal of DOJ’s action on her FOIA request. DOJ OIP informed Plaintiff that it had determined that DOJ had “conducted

an adequate, reasonable search for responsive records” and that none could be located. No details of DOJ’s search were provided by the FBI or by DOJ OIP.

34. In her original FOIA requests and administrative appeals, Plaintiff cited to several documents that had been created by DOJ and press reports of the investigations conducted by DOJ and the FBI. DOJ and the FBI nonetheless asserted that they were unable to locate any files.

35. The search by the FBI for documents responsive to Plaintiff’s FOIA requests was not adequate or reasonable.

36. Plaintiff asserted two compelling public interest grounds that outweighed any privacy interests any individual may have in records maintained by the FBI. First, citing *Roth v. United States DOJ*, 642 F.3d 1161, 1181 (D.C. Cir. 2011), she noted that such potential privacy interests are outweighed by the public’s “compelling interest in knowing whether the FBI is refusing to disclose information that could help exonerate” a death row inmate. Second, citing *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 173 (2004), Plaintiff asserted that there is a significant public interest in disclosing information that may show “the investigative agency or other responsible officials acted negligently or otherwise improperly in the performance of their duties.”

37. In improperly denying Plaintiff’s administrative appeal, the DOJ OIP conflated the two public interest arguments Plaintiff advanced, contending that because Plaintiff had not produced “evidence that would warrant a belief by a reasonable person that the alleged [g]overnment impropriety might have occurred,” she could not meet the *Nat’l Archives* test. Setting aside the propriety of this conclusion, the DOJ OIP completely failed to consider Plaintiff’s *first* public interest argument regarding whether the FBI was unwilling to disclose

information that would potentially exonerate a death row inmate, regardless of whether such information was evidence of government impropriety.

38. Plaintiff did produce sufficient evidence that would warrant a reasonable person to believe that the alleged government misconduct occurred. This evidence included reports conducted by, inter alia, the *Department of Justice* itself, evidence of prosecutions of New Orleans Police Officers for corruption, and several media reports citing DOJ investigations into the NOPD during the relevant time period.

CLAIM FOR RELIEF

39. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 to 38.

40. Defendants have wrongfully withheld the requested agency records.

41. Upon information and belief, the FBI and/or DOJ have possession of records that Plaintiff believes contain evidence of government misconduct and evidence that could exculpate a death row defendant.

42. Upon information and belief, the FBI did not conduct an adequate or reasonable search for records responsive to Plaintiff's FOIA requests.

43. Plaintiff's requests demonstrate a significant public interest in the disclosure of records that establish that the New Orleans Police Department, at the time of Mr. Lacaze's arrest and prosecution, was a source of corruption, and engaged in cover-up of corrupt practices.

44. Plaintiff's requests demonstrate a significant public interest in the disclosure of records that may exonerate a defendant on death row.

45. Plaintiff's requests also demonstrate a significant public interest in knowing whether the FBI is refusing to disclose information that could help a defendant on death row prove his innocence.

46. Plaintiff has exhausted her administrative remedies as provided in the Freedom of Information Act and agency regulations, with respect to Defendants' wrongful withholding of the requested records.

REQUESTED RELIEF

WHEREFORE, Plaintiff prays that this Court: for the following relief:

- a) A judgment declaring that the Defendants' refusal to produce the documents at issue is improper;
- b) An order directing Defendants to process immediately the requested records in their entirety.
- c) An order directing Defendants that, upon completion of such expedited processing, to disclose the requested records in their entirety and to make copies available to Plaintiff.
- d) An order providing for expeditious proceedings in this action.
- e) In the alternative, an order that Defendants produce an index of the requested documents, produce the documents to the Court for the Court to conduct an *in camera* review and provide the documents to Plaintiff if production is required under FOIA;
- f) Award Plaintiff its costs and reasonable attorneys' fees incurred in this action pursuant to 5 USC § 552(a)(4)(E); and
- g) Grant such other and further relief as this the Court may deem just and proper.

Dated: January 24, 2013

Respectfully submitted,

/s/ Mary Lou Soller

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